Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/899,432	KLEIMAN ET AL.	
	Examiner	Art Unit	
	Shobha Kantamneni	1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *91-102*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See page 2.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/SREENI PADMANABHAN/
Supervisory Patent Examiner, Art Unit 1617

Continuation of 11:
Applicant's arguments have been considered, but not found persuasive. All the rejection made in the final office action are MAINTAINED.

Response to Applicant's Arguments:

Applicant argues that " It is well known that salts of long-chain fatty acids are less soluble in water as compared with shorter chain fatty acids salts, and therefore it would be unexpected that salts with chain lengths greater than 18 carbons would have similar and/or improved activity relative to the more-water-soluble materials, such as those materials suggested in Sintov et al." These arguments have been considered, but not found persuasive because the arguments are not commensurate with the instant claims. The instant claims do not limit to water as physiologically active carrier, and thus the solubility of carboxylic acids in water alone with different chain length is not relevant. Note that the physiologically acceptable carrier in the instant claims can be water, alcohol etc. or mixtures of different solvents. The solubility of carboxylic acids with different chain lengths in alcohol/water mixtures will be different from solubility in water.

Applicant argues that " Applicants respectfully submit that the Examiner has overlooked page 2 of the 37 CFR §1. 132 affidavits of Robert Kleiman and David Ashley, which clearly slate that "K I00 refers to the combination of monounsaturated long chain alcohols, jojoba-derived fatty acid salts, and fatty acid esters (specifically, jojoba esters)." These arguments have been considered, but not found persuasive because jojoba-deriived fatty acid salts can be C18-fatty acid salt, since C18-fatty acids are derived from jojoba oil. Accordingly, is not clear as to which fatty acids salts are present in K100. Thus, the 37 C.F.R. § 1.132 Affidavits by Robert Kleiman and David Ashley have been considered, but not found persuasive. The declaration does not provide any information with respect to which unsaturated long chain alcohol, fatty acid salt, and ester are employed in the combination K100, Exhibit 1, and the amounts of individual components employed in the combination K100. Further, there is no data provided for the individual fatty acid salts, and esters. The declaration merely provides antiviral activity data for n-docosanol alone, and does not provide antiviral activity data for the individual fatty acid salts, and esters. Accordingly, the data is not convincing with respect to the synergistic effects of the combination of the present invention.